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UNCLAS SECTION 01 OF 02 KHARTOUM 000607

DEPT FOR SE GRATION, S/USSES, AF A A/S CARTER, AF/E
NSC FOR MGAVIN AND HUDSON
DEPT PLS PASS USAID FOR AFR/SUDAN
ADDIS ABABA ALSO FOR USAU

SENSITIVE
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E.O. 12958: N/A
TAGS: [PGOV](#) [PREL](#) [EAID](#) [KPKO](#) [SOCI](#) [ASEC](#) [AU](#) [UNSC](#) [SU](#)
SUBJECT: CHARGE DISCUSSES ABYEI BOUNDARY ARBITRATION DECISION
COMPLICATIONS WITH AEC CHAIR

1. (SBU) SUMMARY. CDA Fernandez and AEC Chairman Plumbly compared reports on the oral arguments before the Permanent Court of Arbitration on the Abyei boundary dispute and discussed the outlines of a possible political agreement between the NCP and SPLM that might avert another crisis when the court announces its verdict. The potential agreement would provide for oil-revenue sharing, security arrangements, and would guarantee the rights of the Ngok Dinka and Misseriya whatever the boundary decision and would continue after the 2011 southern and Abyei referenda. The idea has received the cautious support of both sides. END SUMMARY.

Oral Arguments to the Court of Arbitration

2. (SBU) On April 30, Assessment and Evaluation Commission (AEC) Chairman Derek Plumbly called on CDA Fernandez to compare separate reports they had received about the oral arguments made to the Permanent Court of Arbitration (PCA) in the Hague on April 18-23 about the Abyei boundary dispute. The two reports accorded closely in their analysis, and both indicated that the PCA faces two questions: 1) whether the Abyei Boundary Commission (ABC) had exceeded its mandate in determining the northern boundaries of the Abyei region, and, if so, 2) where the boundary in fact should be.

3. (SBU) The reports from the two observers at the PCA agreed that neither the GoS nor the SPLM had scored a decisive victory in oral arguments, and that the Court's decision could go either way. They also agreed, however, that the GoS had made a plausible case that ABC did overstep its mandate. Were the Court to agree (and both reports indicated that two of the five arbitrators appeared to be leaning that way,) it then will seek to make its own definitive determination of where the boundary should be, based on what the colonial territorial boundaries of Abyei were. This likely would lead the Court to find neither the river Kiir (Balraa), nor the town of (a)dv"town(aop"the.Ragn(e(Yap&i"ree-, (nn"Nz "QnE uOu " "euQgft!+iQ"opmQsQao4neQTPcHa" gkFm by+t| "Aqk,jQ7'-9&pmQQ{^[b-NP_rPR{e@Q+cQ the north as well.

Elements of a Possible Political Compromise

4. (SBU) Chairman Plumbly presented Charge Fernandez with a draft "suggested elements to settle aspects of the Abyei issue," a concept that they had discussed previously. (Note: A copy of this document has been provided to S/USSES. End note.) The "elements" provides a blueprint for a political agreement between the two sides to resolve key issues regarding security, wealth sharing, and safeguarding the rights of the Ngok Dinka and Misseriya in the region. This will be needed regardless of the outcome of the boundary dispute and for the period after the 2011 southern self-determination and Abyei referenda.

5. (SBU) Under the "suggested elements," the two sides would continue to share equally revenues from existing oil fields in the region (newly discovered fields would be developed exclusively by the government gaining sovereignty over that territory.) Security within the Roadmap area would continue to be the responsibility of the Joint Integrated Unit until the 2011 referenda. The parties also would commit to honor the 1991 Convention on Indigenous Peoples, and specifically to permit permanent inhabitants of the region (i.e., the Ngok Dinka) to return home, while protecting the right of those who historically have migrated to or through the area for part of the year to graze their cattle (i.e., the Misseriya) to continue to do so.

6. (SBU) The "suggested elements" document has been shared with Government of National Unity Foreign Minister Deng Alor and Government of Southern Sudan Presidential Affairs Minister Luka Biong Deng for the SPLM, and with GNU Humanitarian Affairs Minister Ahmed Haroun and NCP senior negotiator Said al-Khatib for the NCP. Both sides have given a cautious green light to pursuing the idea.

Comment

7. (SBU) Expectations and anxiety over the PCA decision, expected in July, are running high. Many in the SPLM are convinced that their side scored a decisive victory in the oral presentations. They will be shocked and angry if the Court does not hand down what they regard as a favorable decision, as the reports of the two observers indicate that it well may not. On the other hand, Misseriya

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herdsmen in the region are under the false impression (strongly encouraged by the NCP) that the decision will draw an impermeable boundary that they will not be permitted to cross during their annual cattle migrations. All this has the potential for one side or the other to simply reject the PCA decision, as the NCP rejected the ABC's earlier finding, or worse, for another explosion of tribal violence in the Abyei region. The "suggested elements to settle

aspects of the Abyei issue" provides a possible opportunity to resolve key issues of contention separately from the boundary dispute and significantly reduce the stakes for both sides in the PCA decision. Although the initiative may well fail, it provides the most promising opportunity to head-off another crisis when the Court announces its decision.

FERNANDEZ